

CORPORATE WAQF MODEL AND ITS DISTINCTIVE FEATURES: THE FUTURE OF ISLAMIC PHILANTHROPY¹

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Abstract

It has been observed that the efforts to rejuvenate waqf institutions in Islamic countries were participated by the corporate entities. For example, in Malaysia, Johor Corporation (JCorp) has initiated a waqf clinic in 1998 which later expanded into a corporate waqf entity known as Waqaf An-Nur Corporation Berhad (WANCorp). In other event, Majlis Agama Islam Wilayah Persekutuan (MAIWP) has collaborated with Tabung Haji to develop a Class A waqf building leased to Bank Islam Malaysia Berhad (BIMB) in 2011. Recently, Majlis Agama Islam Selangor (MAIS) and Bank Muamalat Malaysia Berhad (BMMB) have combined their efforts to develop a cash waqf fund named as Wakaf Muamalat Selangor. All these developments in waqf endeavor involving corporate entities are worth to be analyzed in order to create a new framework of waqf practice. Thus, the paper aims to identify the models of corporate waqf, and highlight the Shariah considerations on this new form of waqf. The study will establish corporate waqf as an independent category of waqf due to its salient characteristics. The novelty of this finding is against the common perception of public who consider corporate waqf as a form of cash waqf. This study suggests corporate waqf as the best form of modern waqf practice based on its vibrant nature and active roles with strong professional participation in its management.

Keywords: Corporate Waqf, Waqf, Islamic Philanthropy

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1. Introduction

The contemporary waqf concept known as corporate waqf have been practiced in a number of Muslim countries, namely; Turkey, Malaysia, Bangladesh, India and Pakistan. The term ‘corporate waqf’ was emerged during the launching of Johor Corporation’s (JCorp) corporate waqf scheme in 2006 although it was found that corporate entities’ participation in establishing and managing waqf assets has already started earlier in Pakistan and Turkey (JCorp, 2006; Murat, 2011; Asharaf and Abdullah 2013; Magda 2013). Corporate bodies’ engagement into this noble waqf activities show the ethical dimensions of corporate world.

In Malaysia, the initiative to develop corporate waqf turns into a national agenda for empowering the socio-economic condition of Muslims in the country. Prime Minister in his speech during Bajet 2013 had outlined the focus on establishing corporate waqf at the national level under the supervision of The Department Wakaf, Zakat and Hajj (JAWHAR) (MOF, 2012). JAWHAR has been responsible to set up a blueprint for corporate waqf development. Recently, during the launching of Bumiputera Economic Empowerment Program, Prime Minister was again reiterated the main role of corporate waqf entity towards enhancing the value of idle lands belonging to Bumiputera Muslims. Under Third Empowerment Focus: Strengthening Bumiputra Non-Financial Assets, Malaysian Wakaf Foundation will be granted wakaf corporate status for the main objective of developing a large number of underutilized waqf properties nationwide (Berita Harian, 2013). The corporate culture of accountability, prudence and transparency applied in corporate waqf concept is expected to bring new dimension into current waqf practice.

2. Problem statement

Although the practices of corporate waqf by several institutions have awakened during the late 1980s and the dawn of 1990s e.g. JCorp and Bank Bangladesh, it has not been recognized well as an independent and standalone category of waqf practices. Hajah Mustafa Mohd Hanefah et al (2011) have suggested waqf corporate as a new independent waqf category, contradicting to the prevailing view which considers corporate waqf as a type of cash waqf. This is due to the fact that the concept of waqf corporate is yet to be conceptualized and defined academically and independently. Therefore, this paper is an effort dedicated to shed some light on the subject of corporate waqf and further bring up the conceptualization of the subject to the next level.

3. Objectives of the Paper

This study aims to:

1. Identify the models of corporate waqf, and
2. Highlight the Shariah considerations on this new form of waqf

This study is theoretical in nature. Thus, it is deeply based on the rigorous and thorough analysis of the previous literatures and data.

4. Literature Review

The emergence of movable *waqf* assets, particularly in the form of shares of the company and cash money implemented in a number of Muslim countries has also affecting *waqf* practice in Malaysia (Magda Ismail Abdel Mohsin, 2009). In 2006, Johor Corporation (JCorp) pioneered the participation of corporate entity in the administration *waqf* affairs by pledging the shares of its own company with the total amount of RM200 mil as *waqf* (Borham, 2011; Hajah Mustafa

Mohd. Hanefah et al., 2009). This corporate *waqf* concept WANCORP; a subsidiary of JCorp is appointed as the trustee responsible to manage *waqf* fund and channel the proceeds to the beneficiaries.

The establishment of Corporate *Waqf* in 2006 by Johor Corporation (JCorp) has transformed *waqf* practice in Malaysia. For the first-time *waqf* assets in the form of shares of company was issued and managed by corporate body. According to its founder; Tan Sri Muhammad Ali Hashim, the idea of creating corporate *waqf* derives from the notion of jihad business pioneered by himself with the main agenda is to improve socio-economy wellbeing of Malay society in the country (Muhammad Ali Hashim, 2012). Hajah Mustafa et.al (2009) and Abdul Shakur (2011) explains in detail the structure of corporate *waqf* which started with the pledged of share's amount RM200million as *waqf* to WANCORP; a subsidiary of JCorp as a nazir (trustee). WANCORP manages and distributes *waqf* proceeds to the beneficiaries as stated in *waqf* deed.

Perhaps, Koc Holdings in turkey is the first corporate bodies involved in the establishment and administration of *waqf* properties as early as 1967 (Cizakca, 2011b). Koc Holdings endowed 10,000 shares of the company and entrusted to Koc Foundation as a trustee (nazir). Most of *waqf* fund managed by Koc Foundation channels towards the establishment education institutions, for example, Koc University. It is clear from the above explanation that the distinction of *waqf* management between Koc Holdings and JCorp lies in the trusteeship of *waqf* assets. While WANCORP a business entity responsible to manage *waqf* assets, Koc Holdings established their Koc Foundation for administrating and managing *waqf* properties.

The above discussion shows that corporate entities in a number of Muslim countries such as Malaysia, Turkey and Bangladesh have played a major role in the development and management of *waqf* properties. It is worth to note that these institutions focus on developing movable *waqf*

assets, in particular, shares and cash. Given the current state of underprivileged of Muslims in most Muslims countries, the participation of more corporate bodies in *waqf* activities could enhance and provide better living standard for them.

5. Conceptualization of Corporate Waqf

This section constitutes the finding chapter of this study. It is a proposal to reconceptualize the concept of corporate waqf based on their practices from main aspects: (i) models and (ii) Shariah considerations.

5.1 Corporate Waqf Models

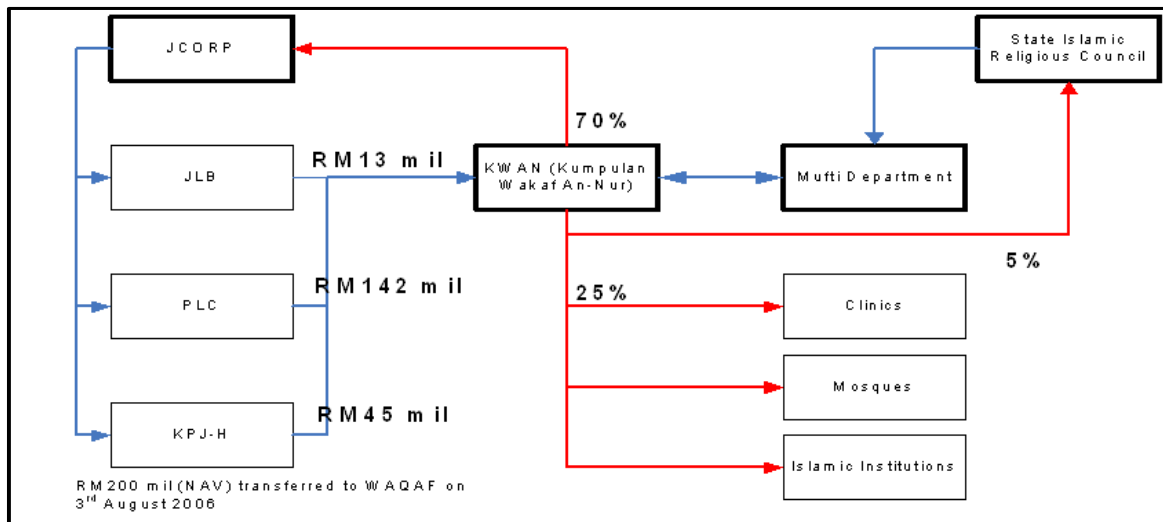
Tan Sri Ali Hashim (2012) outlines six models of corporate waqf that could be structured including: (i) business entity or corporations, (ii) banking and financial institutions, (iii) universities, (iv) foundations, (v) cooperatives, and (vi) hospitals or clinics. Currently in Malaysia, corporate waqf structured on Business Corporation and banking and financial institution have been applied by Johor Corporation and Bank Muamalat Malaysia Berhad (Asharaf & Abdullaah, 2012, 2013; Hajah Mustafa et.al, 2011). The conceptual corporate model based on university on the hand, is expected to be adopted by public universities for the purpose of income generating purposes (Abdullaah & Asharaf, 2008). The details of these three models are shown below:

5.1.1 Business Corporation Model

In 2006, JCorp launched the idea of “Corporate Waqaf” which involved the transfer of 12.35 million unit shares owned by JCorp Kulim (M) Bhd, 18.60 million unit shares in KPJ Healthcare Bhd and 4.32 million unit shares in Johor Land Bhd to Kumpulan Waqaf An-Nur Bhd as trustee (JCorp, 2007). This concept is a key institutional strategy towards making a success of its

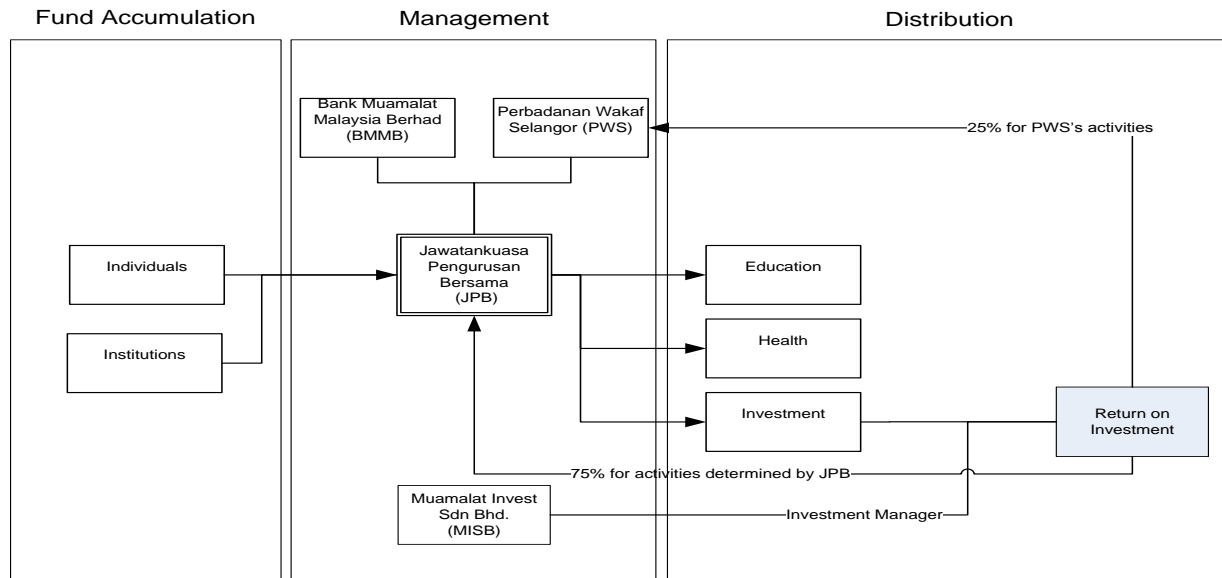
corporate mission of “Business Jihad”. As a proof, via its corporate waqaf agenda as reported in 2007, JCorp pledges to dedicate 25% of the annual dividend payout from the shares transferred into waqaf. (JCorp, 2007). Thus, the dividend is useful to organize various activities for Muslims and non-Muslims and arranged for charitable and religious activities that benefit and fulfill the needs of the society as a whole.

Figure 1: The Structure of Business Corporation Model (Asharaf & Abdullaah, 2012)



5.1.2 Banking and Financial Institution Model

Figure 2: The Structure of Business Corporation Model (Asharaf & Abdullaah, 2013)



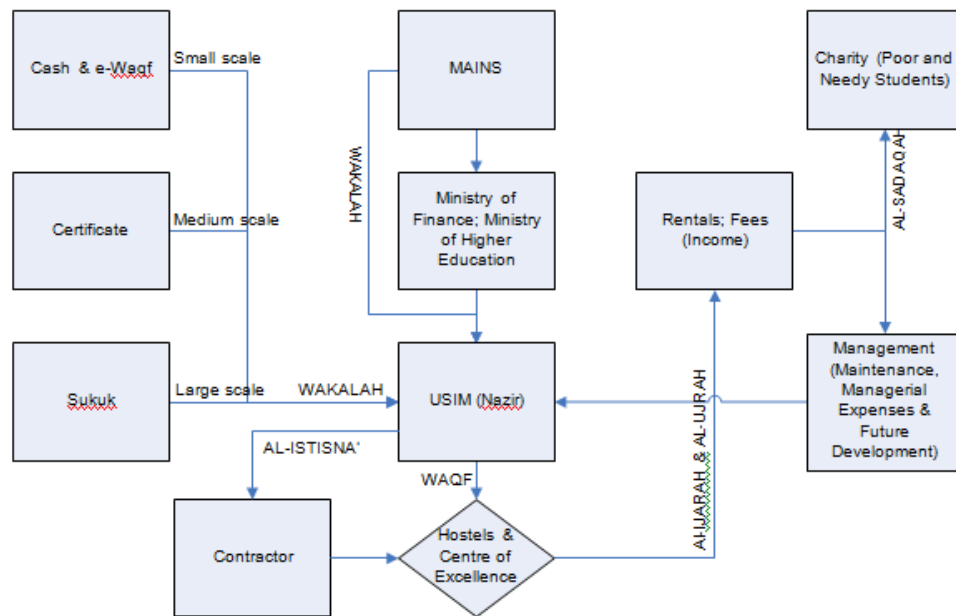
The *waqf* fund is obtained through the Bank Muamalat banking services from the individuals and institutions. The minimum contribution is RM10 by individuals and RM100 by institutions and there is no maximum amount for contribution by both. The *waqf* fund aims to accumulate a sum of RM50 million in three years' time and Bank Muamalat itself has endowed RM1 million into the fund and its staff has contributed RM74,040 at the launching ceremony of Wakaf Muamalat-Selangor (Bank Muamalat, 2012). The fund will be managed and channelled by JPB to three main sections, namely; education, such as infrastructure construction, equipment and etc; healthcare, such as dialysis machine and equipment, research and treatment; investment by Muamalat Invest Sdn. Bhd.

Muamalat Invest Sdn. Bhd. - a fund management company - will invest the allocated fund professionally in Shariah compaliant instruments to generate return. 25% of the return will then be distributed to the PWS and 75% of them will be channelled back to JPS for redistribution in areas deemed appropriate by them. The two main sectors aimed as beneficiaries of Wakaf Selangor Muamalat are healthcare and education for the needy people, both Muslim and non-Muslim. These two sectors have been the major area of *waqf* distribution in the history of Islamic

countries. Murat Cizakca (2011a) believes that *waqf* distribution to the public will eventually help to mitigate the cost of living and government spending.

5.1.3 Universities Model

Figure 3: The Structure of Corporate Waqf University Model (Abdullaah & Asharaf, 2013)



The construction of the building (e.g. hostels or excellence centre) should be based on the contract of *al-istisna'* (manufacturing sale). In this particular framework, the *nazir* (acting as agent) deals with the contractor to build the building as prescribed in the *wakalah* and *waqf* contract. No third party financing is needed if the waqf fund is sufficient. In the case of non-sufficiency of the fund, a more complex structure is needed and the discussion is not within the scope of the study.

The building e.g. hostels, could be leased to the university or students or any users at a reasonable rate. Exemption or rebate on the rentals could be given to any qualified and deserving parties (e.g. poor and needy students). The rentals acquired could be used for two main purposes. The two main purposes are:

- The maintenance of the (waqf) building. This involves the cost of managing (manager's salaries, security, *etc.*), upgrading, renovating, fixing, repairing, cleaning of the assets or *et cetera*.
- The charity purposes. This is based on the contributors' intention whether to make a general or specific endowment. It is better to make a general endowment so that the nazir could channel the fund to any types of charity purposes. The description of the beneficiaries could be done on the basis of their attributes e.g. poor and needy students.

The portion of each category could be stated in the contract. However, it is more flexible to leave it to the due diligence of the *nazir*.

5.2 Shariah Consideration of Corporate Waqf

There are several considerations in examining the corporate waqf from the Shariah viewpoint.

The considerations are as follows:

- Shakhshiyyah I'tibariyyah: Ahliyyah (Legal Capacity) and Wilayah (Legal Authority)
- Waqf of al-Waqif on Himself
- Al-Waqif Stipulates the Waqf's Proceeds (al-Ghallah) for Himself
- Hybrid Waqf (Waqf Mushtarak): Combination of Waqf Khayri and Waqf Ahli/Dhurri
- Istibdal

5.2.1 Shakhshiyyah I'tibariyyah: Ahliyyah (Legal Capacity) and Wilayah (Legal Authority)

In waqf, the donour usually is a natural individual (*shakhshiyyah haqiqiyyah* or *tabi'iyyah*).

However, in the practice of corporate waqf, the donour is usually an institution. Thus, the concept of legal individual or entity (*shakhshiyyah i'tibariyyah/ qanuniyyah/ ma' nawdiyyah*) may

arise. However, since most of the contemporary Islamic jurists have agreed to recognize this concept based on analogy to *bayt al-mal*, *masjid* and *slavery* institution, the issue may be deemed as resolved. However, the two most important requirements that must be enjoyed by the representative (*mumaththil*) of this *shakhsiyyah i'tibariyyah* are *ahliyyah* (legal capacity) and *wilayah* (legal authority). The second requirement means that the donour must be the owner of the subject matter or an agent (*wakil*) appointed by the owner who performs the contract based on *wakalah* (agency) contract. If the donour has neither *wilayah* nor *wakalah* on the subject matter, his transaction on the subject matter is known in Islamic jurisprudence as *fadalah*. Hanafiyyah, Malikiyyah and an opinion of Imam Ahmad validate the contract of *fadalah* but it is suspended and subject to the approval of the owner. On the other hand, Shafi'iyyah and an opinion of Imam Malik dan Imam Ahmad state that the contract is invalid (WASI, 1983). This issue may be more significant if the company - that plans to create its own waqf corporate scheme - is owned by the government and not by the individuals.

5.2.2 Waqf of al-Waqif on Himself

Generally, the practice of waqf is meant for charity and *qurbah*. Accordingly, the majority of Islamic jurists state that the ownership of al-waqf should not return back to the waqif himself as it denies the very purpose of waqf. However, based on the authors' analysis, some of the waqf corporate practices nominate the waqif himself as the legal owner of the waqf: How does Islamic jurisprudence judge this issue? The answer is as follows.

The mainstream stance of the Islamic jurists on this matter view this matter as invalid as the waqif could not re-own himself what he already owns. This is the stance of al-Malikiyyah, al-Shafi'iyyah in their strongest view (*al-asahh*), the authorized view of al-Hanabilah (*al-madhhab*) and Muhammad Ibn al-Hasan of al-Hanafiyyah. On the other hand, this practice has been

approved by Abu Yusuf of al-Hanafiyyah, and this is their (al-Hanafiyyah) formal stance, an opinion of al-Shafi'iyyah and a view of al-Imam Ahmad (WASI, 1983).

The authors favor the second opinion with regard to the practice of corporate waqf as the institutions usually do not really mean to reown the waqf asset. Such practice is carried out to give the corporate institutions full flexibility and right in managing, distributing and channeling the waqf proceeds or even utilizing it. The institutions could use the proceeds of corporate waqf for their CSRs programmes and in certain situations reuse the proceeds to sustain their operation and business. This flexibility would provide them greater motivation to involve in the corporate waqf practices and provide more rooms for Shariah compliance. However this opinion may legally contradict to existing legal framework.

5.2.3 Al-Waqif Stipulates the *Waqf's* Proceeds (*al-Ghallah*) for Himself

Another issue which may seem to be similar with the previous one is the situation where the waqif stipulates himself as the sole beneficiary or the major beneficiary or amongst the beneficiaries of the waqf's proceeds. Hanabilah, Hanafiyyah and an opinion of Shafi'iyyah view such practice as permissible in order to encourage the people to make endowments and based on several Shariah evidences. On the other hand, Shafi'iyyah and Muhammad Ibn al-Hasan of Hanafiyyah view such practice as generally impermissible with certain exceptions (WASI, 1983).

5.2.4 Hybrid Waqf (*Waqf Mushtarak*): Combination of Waqf *Khayri* and Waqf *Ahli/Dhurri*

In terms of the beneficiaries, *waqf* could be either *waqf khayri* (charitable endowment) or *waqf ahli/dhurri* (endowment for offspring). Based on the waqf corporate practices, it has been observed that some institutions stipulate themselves or their subsidiaries as the primary

beneficiaries of the waqf proceeds. As discussed above, there are some Islamic jurists and opinions that approve such practice. From a fiqh perspective, the combination between *waqf khayri* and *waqf dhurri* is known as *waqf mushtarak*. From a managerial perspective, *waqf mushtarak* could provide advantages for the institutions that involve in the corporate waqf. The institution may design its corporate waqf scheme to be in tandem with its CSR programmes. Thus, the practice of waqf corporate and CSR programme could be constructed jointly as a pair.

5.2.5 Istibdal

The issue of *istibdal* is highly imperative for the continuity and sustainability of waqf corporate. Although the practice of *istibdal* has been approved by some Islamic jurists with certain conditions, the issue may be reviewed in details to ensure the Shariah compliance of the *istibdal* practice. The corporate waqf model as pioneered and practiced by WANCorp has undergone the practice of *Istibdal* i.e. replacement of waqf asset with its similars. The practice has taken place on 29th June 2009 where the waqf shares of Johor Land Berhad has been replaced with shares of Al-‘Aqar KPK REIT since Johor Land Berhad has been delisted form Bursa Malaysia.

The *istibdal* practice was based on the (market) value of the shares and not the quantity (units) of the shares. The 4.32 million units of waqf shares of Johor Land Berhad which have current market value of RM 13 million has been replaced with 12.62 million share units of Al-‘Aqar KPJ REIT which have the same market value of RM 13 million (Borham, 2011). This practice has provided a precedent for the practice of *istibdal* where necessary in the future.⁴ This *istibdal* has been made known and acknowledged by the then state’s Mufti.

⁴ Based on interview with Tan Sri Ali Hashim.

6. Conclusion: The Future of Islamic Philanthropy

The advantages of corporate waqf could be observed from several aspects. With the huge size of assets and funds, professional management team, public confidence towards their practices and government's recognition, the corporate waqf could be viewed as the most promising star in the area of waqf development. However, such potentials may only be cultivated and enriched optimally with the support of the authorities such as MAINs, JAWHAR and Malaysian fatwa bodies. The synergy between the institutions could bring up further the waqf corporate practice to rejuvenate and reconstitute the waqf system of the ummah.

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